

ESTTA Tracking number: **ESTTA673352**

Filing date: **05/20/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061257
Party	Defendant Heartland Energy Group, Ltd.
Correspondence Address	HEARTLAND ENERGY GROUP LTD OLIAJI TRADE CENTER , FRANCIS RACHEL ST STE 15 1ST FL VICTORIA MAHE, SEYCHELLES
Submission	Other Motions/Papers
Filer's Name	Amber N. Davis
Filer's e-mail	adavis@iplawfl.com, kwimberly@iplawfl.com, bmahan@iplawfl.com
Signature	/s/ Amber N. Davis
Date	05/20/2015
Attachments	Motion to Suspend Proceedings (052015).pdf(161168 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

FLUID ENERGY GROUP, LTD.,

Petitioner,

v.

**Cancellation No. 92061257
Registration No. 4224628**

HEARTLAND ENERGY GROUP, LTD.

Registrant.

_____/

MOTION TO SUSPEND PROCEEDINGS PURSUANT TO 37 CFR § 2.117(a)

COMES NOW, Registrant, HEARTLAND ENERGY GROUP, LTD., (“HEG” or “Registrant”) by and through its undersigned attorneys and pursuant to Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a), and hereby moves for suspension of the above-styled cancellation proceeding.

As grounds in support of this motion, HEG asserts that suspension of this cancellation proceeding is necessary because of a prior pending arbitration matter in the International Chamber of Commerce styled as *Fluid Energy Group Ltd. and Fluid Lux S.A.R.L. v. Heartland Energy Group, Ltd. and Heartland Energy Group, Ltd. v. Fluid Energy Group, Ltd., Fluid Lux S.A.R.L., Darren Thatcher and Clay Purdy*, ICC Case No.: 20282/RD (the “ICC Action”). Fluid Energy Group, Ltd. (“Fluid” or “Petitioner”) filed its Amended Request for Arbitration on January 20, 2015 for rescission of agreements for fraudulent inducement; rescission of License and Manufacturing agreements for failure of consideration; declaration judgment of patent invalidity; and, declaration of non-infringement. Registrant filed Counterclaims against Petitioner, Fluid for breach of contract; patent infringement of U.S. Patent No.: 8,580,047; patent

infringement of U.S. Patent No.: 8,430,971; patent infringement of U.S. Patent No.: 8,784,573; and, relative to the instant proceeding, trademark infringement under 15 U.S.C. § 1114; and, trademark infringement under 15 U.S.C. §1125(a) as it relates to the ENVIRO-SYN® mark. See Petitioner's Amended Request for Arbitration and Registrant's Amended Counterclaims attached hereto as Exhibits "A" and "B" respectively. In addition, there is prior pending civil litigation involving the same parties in the Court of Queen's Bench of Alberta, Court File Number: 1401-09170¹.

The pending arbitration and the civil litigation proceeding involve many of the same issues as well as trademark infringement for the same trademark as the one at issue in the above-referenced cancellation proceeding, namely, ENVIRO-SYN. Petitioner has filed a Petition to Cancellation of Registration No. 4,224,628 for the mark, ENVIRO-SYN. As stated above, HEG has filed counterclaims in the pending ICC Action for infringement of the same ENVIRO-SYN trademark, which is the subject of Fluid's Petition for Cancellation.

The outcome of the ICC Action will, among other issues to be decided, determine whether Registrant is the true and rightful owner of the mark and whether Petitioner has infringed the mark sought to be cancelled, and thus will have a direct bearing on the issues involved in the cancellation proceeding before the Board.

Under 37 CFR §2.117(a), whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or other Board proceeding. Furthermore, under 37 CFR §2.117(c), proceedings may also be suspended, for good cause, upon motion

¹ The pending civil litigation in the Court of Queen's Bench of Alberta has been stayed by the Court in order for the arbitration to proceed.

approved by the Board. The Board has discretion to suspend a proceeding when a civil action is pending between the parties. TBMP, § 510.02(a). *See also, Argo & Company, Inc. v. Carpetsheen Manufacturing, Inc.*, 1975 WL 21260, 187 U.S.P.Q. 366 (TTAB 1975).

WHEREFORE, Registrant, Heartland Energy Group, Ltd. respectfully requests suspension of the subject Cancellation Proceeding No. 92061257 until the pending litigation referenced above is terminated.

DATED this 20th day of May, 2015.

Respectfully Submitted,

BEUSSE WOLTER SANKS & MAIRE, P.A.
390 N. Orange Avenue, Suite 2500
Orlando, Florida 32801
Telephone: (407) 926-7700
Facsimile: (407) 926-7720
E-mail: adavis@iplawfl.com
E-mail: kwimberly@iplawfl.com
Attorneys for Registrant

By: /s/ Amber N. Davis
Amber N. Davis
Florida Bar No.: 0026628
Kevin W. Wimberly
Florida Bar No.: 0057977

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed via U.S. Mail and Electronic mail this 20th day of May, 2015 to: Benjamin Natter, Esquire, NATTER & NATTER, 501 Fifth Avenue, Suite 808, New York, New York 10017.

/s/ Amber N. Davis
Attorney

EXHIBIT “A”

IN THE MATTER OF THE
ARBITRATION BETWEEN:

-----	x	
	:	
FLUID ENERGY GROUP LTD. and FLUID LUX	:	
S.A.R.L.,	:	
	:	
Claimants,	:	No. 20282/RD
	:	
-against-	:	AMENDED REQUEST
	:	FOR ARBITRATION
HEARTLAND ENERGY GROUP, LTD.,	:	
	:	
Respondents.	:	
-----	:	
	:	
HEARTLAND ENERGY GROUP, LTD.,	:	
	:	
Counterclaimant,	:	
	:	
-against-	:	
	:	
	:	
FLUID ENERGY GROUP LTD., FLUID LUX S.A.R.L.,	:	
CLAY PURDY AND DARREN THATCHER	:	
	:	
	:	
Counterclaim	:	
Respondents.	:	
-----	X	

Claimants Fluid Energy Group Ltd. (“Fluid Energy”) and Fluid Lux S.a.r.l. (“Fluid Lux”) (collectively, “Fluid”), demand arbitration with Heartland Energy Group, Ltd. (“HEG”) as follows:

THE PARTIES

1. Fluid Energy is a corporation formed under the laws of Alberta, Canada, with offices at:

214 11th Avenue SE
Calgary, Alberta, Canada T2G 0X8

2. Fluid Lux is a limited liability company formed under the laws of Luxembourg with its registered office at:

73 Cote d'Eich
L-1450 Luxembourg

3. HEG claims to be a legal entity formed under the laws of the Republic of Seychelles with its registered office at:

Suite 15, 1st Floor Oliaji Trade Center,
Francis Street, Victoria,
Mahe, Seychelles

4. John MacDonald is an officer or director of HEG and on information and belief resides in Florida.

5. Stephen Rowley is an officer of HEG and on information and belief resides in Missouri.

FORUM AND GOVERNING LAW

6. HEG and Fluid Energy are parties to a Manufacturing Agreement dated October 10, 2012, and amended and restated June 18, 2013 (the "Fluid Energy Manufacturing Agreement") (Ex. A.)

7. The Fluid Energy Manufacturing Agreement includes an arbitration clause that states:

All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC") by three arbitrators appointed in accordance with said rules. Any arbitration administered by the ICC shall be held in the ICC's Florida, USA office, unless otherwise agreed to by the Parties hereto. The award of the arbitrators shall be final and binding and may be confirmed and entered in any court, state or federal, having jurisdiction. The arbitration shall be conducted in the English language.

(Ex. A, Fluid Energy Manufacturing Agreement, §16.1.) The Fluid Energy Manufacturing Agreement designates the law of the State of Florida as the governing law. (*Id.* at §16.3.)

8. HEG and Fluid Energy are also parties to two licensing agreements dated October 10, 2012, and amended and restated June 18, 2013. (Exs. B and C.) Each licensing agreement includes arbitration and governing law clauses identical to those in the Fluid Energy Manufacturing Agreement. (Ex. A §§ 20-21; Ex. B §§ 20-21; Ex. C §§ 20-21.)

9. HEG and Fluid Lux are parties to a similar manufacturing agreement (the “Fluid Lux Manufacturing Agreement,” together with the Fluid Energy Manufacturing Agreement, the “Manufacturing Agreements”) and licensing agreements, all dated October 10, 2012,¹ and amended and restated June 18, 2013.² (Exs. D, E, F.) These agreements contain arbitration and governing law clauses identical to those in the Fluid Energy Manufacturing Agreement. (Ex. D. §§ 16.1-16.2; Ex. E §§ 20-21; Ex. F §§ 20-21.)

FACTUAL BACKGROUND

The Agreements

10. Fluid is engaged in the manufacture and sale of non-hazardous replacement chemistries for the oil and gas industry.

11. Under the License Agreements, HEG agreed to license certain patented technology known as the “231B1 Technology” and the “102B1 Technology” to Fluid.

12. The 102B1 Technology relates to cleaning methods and compositions for industrial and commercial cleaning that are said to be “non-corrosive to metals” and to have been

¹ Though Exhibits B and E are dated October 10, 2013, this appears to be a typo. Those agreements were entered into on the same date as the others, October 10, 2012.

² The license and manufacturing agreements dated October 10, 2012, and restated June 18 2013, between HEG on one hand, and Fluid or Fluid Lux on the other hand, are collectively referred to as the “Agreements.”

“shown to reduce corrosion levels well below [U.S. Department of Transportation (“D.O.T.”)] corrosion limits of 6.25 mmpy.”³ (Ex. G – U.S. Patent No. 8,163,102 (the “ ’102B1 Patent”).)

13. Under the Manufacturing Agreements, HEG grants Fluid the right to manufacture and market the products constituting the patented technology. (Ex. A § 2.1.)

14. Fluid Energy was granted rights to manufacture and sell the patented technology in Canada. (Ex. A at Ex. A.) Fluid Lux was granted similar rights in Europe and the countries of the Middle East. (Ex. D at Ex. A.)

15. Products known as “Oil Safe AR” and “MudSafe CR” were represented by MacDonald and Rowley to be commercial embodiments of the patented technology marketed by Environmental Manufacturing Solutions LLC (“EMS”), a limited liability company controlled by MacDonald, and Heartland Solutions, Inc. (“Heartland Solutions”), a corporation controlled by Rowley.

**MacDonald and Rowley Make False Representations of Fact to Fluid
Regarding the Patented Technology**

16. Prior to execution of the Agreements, MacDonald and Rowley repeatedly assured Fluid that the patented technology was non-corrosive and not regulated for purposes of domestic and international transportation. Those assurances were made orally and in writing, including in the following documents that MacDonald and Rowley provided to Fluid:

- An EMS Material Safety Data Sheet dated March 13, 2009, for Oil Safe – AR – Non Regulated Material, which states that the product is “not regulated as hazardous” by the D.O.T., Transport Canada (under the Transportation of Dangerous Goods Act) or international maritime and air transport agencies. (Ex. H.)
- A description of Oil Safe AR bearing the logos of EMS and Heartland Solutions, which states that the product “is 20 times less corrosive than even the 6.25 mmpy rating that would classify it as corrosive on a label.” (Ex. I.)

³ The measurement “mmpy” refers to millimeters per year, or the amount of corrosion caused by the product over the course of one year.

- A Technical Data Sheet on Oil Safe AR bearing the Heartland Solutions logo, which states that the product's corrosion rates on steel and aluminum are "0.59 mmpy" and "3.96 mmpy," respectively, which is "NON-CORROSIVE." (Ex. J.)
- An Oil Safe AR PowerPoint presentation stating that the product "is 20 times less corrosive than even the 6.25 mmpy rating that would classify it as corrosive on a label." (Ex. K.)
- An Oil Safe AR Immersion Corrosion Test Report on the letterhead of "NASA Support Labs," which states that the corrosion rate of the product "does not exceed 6.25 millimeters per year" on "SAE C1020 Steel" or "7075-T6 non-clad Aluminum." (Ex. L.)
- A Mud Safe CR Immersion Corrosion test report on the letterhead of "Del Tech Laboratories Ltd.," which states that the corrosion rate of the product does not exceed 6.25 mmpy on steel or aluminum. (Ex. M.)

17. The representations by MacDonald and Rowley that the patented technology was non-corrosive and not regulated for transportation purposes were material inducements to Fluid's entering into the Agreements. Non-regulated status was crucial to Fluid's ability to market products to customers without incurring significant regulatory costs. In addition, having a non-corrosive and non-regulated product was a significant marketing advantage over competing products in the oil and gas industry.

18. Fluid relied on these representations and would not have entered into the Agreements without MacDonald's and Rowley's repeated and detailed assurances that the patented technology was non-corrosive and non-regulated for purposes of transportation in Canada and internationally.

Fluid Learns that Defendants' Representations Concerning Corrosion Were False

19. Subsequent to entering into the Agreements, Fluid learned that the foregoing representations were false. Fluid's customers have conducted corrosion testing of the patented technology, and Fluid has confirmed, that the technology does not come close to meeting the corrosion limit of 6.25 mmpy for transportation purposes or the specific results stated in the

documents referred to above. Fluid has also learned that the products embodying the technology are not exempt from Canadian and other transportation regulations.

20. In April, 2014, Fluid commissioned third party corrosion tests of the patented technology that showed that the technology had a significantly higher corrosion rate for steel and aluminum than had been repeatedly represented by defendants. (Ex. N.)

21. On information and belief, the purported “NASA” and “Del Tech” laboratory reports furnished by MacDonald and Rowley are fabrications. Fluid has not been able to locate any entity known as “NASA Support Labs,” either at the address shown in the report or anywhere else. Nor has it been able to locate any entity named “Del Tech Laboratories Ltd,” although there is a similarly-named testing laboratory, Dell Tech Laboratories, Ltd., located in London, Ontario.

22. By letter dated April 11, 2014, Fluid notified HEG, EMS, MacDonald, and Rowley of Fluid’s conclusion that the patented technology did not meet the specifications represented by MacDonald and Rowley and demanded HEG’s acknowledgement of rescission of the Agreements and restitution of all royalties paid under the Agreements and return of the deposit Fluid paid for U.S. distribution rights, by April 24, 2014.

23. HEG has refused to rescind the Agreements and to return the payments made by Fluid under the Agreements.

Fluid’s Alternative Product

24. Upon notifying HEG, EMS, MacDonald, and Rowley of Fluid’s conclusion that the patented technology did not meet the specifications represented by HEG, MacDonald and Rowley, Fluid began formulating an alternative product to sell to its customers.

25. The formulation of Fluid's alternative product is entirely distinct from the patented technology.

26. Fluid has patents pending in Canada for its alternative formulation.

Issues Regarding the Patents and Their Validity

27. The License Agreements for 231B1 Technology (the "231B1 Licenses") state:

Licensor [HEG] claims that it has been granted the assignment rights from John MacDonald, who is the sole and exclusive owner of, and has the sole and exclusive right to grant licenses under the U.S. Patents identified in Exhibit A to this Agreement and specifically known as **The "231B1" Technology**, including all reissuances, supplementary protection certificates, extensions and re-examinations thereof (collectively, the "Patents"), as well as any underlying technology or know-how owned by the Licensor and related thereto or any improvements thereon (the "Technology").

(Exs. B & E) (emphasis in original).

28. Exhibit A was not attached to the 231B1 Licenses and HEG has failed and refused to provide Fluid with a copy of Exhibit A. MacDonald has claimed that his patents are covered by the secrecy provisions of 35 U.S.C. Section 181.

29. On information and belief, MacDonald is not the owner and HEG is not the assignee of any United States patent with the suffix "231B1."

30. The License Agreements for the 102B1 Technology (the "102B1 Licenses"), state:

Licensor [HEG] claims that it has been granted the assignment rights from John MacDonald, who is the sole and exclusive owner of, and has the sole and exclusive right to grant licenses under the U.S. Patents identified in Exhibit A to this Agreement and specifically known as **The "102B1" Technology**, including all reissuances, supplementary protection certificates, extensions and re-examinations thereof (collectively, the "Patents"), as well as any underlying technology or know-how owned by the Licensor and related thereto or any improvements thereon (the "Technology").

(Exs. C & F) (emphasis in original).

31. Exhibit A was not attached to the 102B1 Licenses and MacDonald has failed and refused to provide Fluid with a copy of Exhibit A.

32. On information and belief, the phrase “102B1 Technology” in the License Agreements refers to the ’102B1 Patent (U.S. Patent 8,163,102) issued to MacDonald and assigned to Green Products and Technologies LLC. (Ex. G.)

33. The 102B1 Licenses do not refer to continuations, continuations in part or divisions of the ’102B1 Patent and MacDonald expressly refused to include continuations, continuations in part and divisions of the ’102B1 Patent in the licenses.

34. United States Patent No. 8,430,971 (the “ ’971 Patent”) is a division of the ’102B1 Patent. At the time of execution of the Agreements, MacDonald had already filed an application for the ’971 Patent. (Amended Counterclaim, Ex. Y.)

35. United States Patent No. 8,580,047 (the “ ’047 Patent”) is a division of the ’971 Patent. At the time of execution of the Agreements, MacDonald had already filed an application for the ’047 patent. (Amended Counterclaim, Ex. W.)

36. United States Patent No. 8,784,573 (the “ ’573 Patent”) is a division of the ’047 Patent. (Amended Counterclaim, Ex. YY.)

37. The ’971, ’047 and ’573 Patents claim methods that have application in the oil and gas industry.

38. The ’047 Patent claims a method for performing hydraulic fracturing on oil or gas wells.

CLAIMS FOR RELIEF

FIRST CLAIM:

RESCISSION OF THE AGREEMENTS FOR FRAUDULENT INDUCEMENT

39. The oral and written representations set forth above were false statements of fact by respondents.

40. Respondents knew or should have known that those representations were false.

41. Respondents made the representations in order to induce Fluid to enter into the Agreements.

42. The representations were material inducements to Fluid's entering into the Agreements and Fluid would not have entered into the Agreements without them.

43. Fluid relied on the representations to its detriment and has been damaged thereby.

44. Fluid has no adequate remedy at law.

SECOND CLAIM:

**RESCISSION OF THE 231B1 LICENSES AND RELATED MANUFACTURING
AGREEMENTS FOR FAILURE OF CONSIDERATION**

45. For the reasons set forth above, the so-called 231B1 Technology does not exist, no patents or technology or rights thereto were licensed to Fluid under the 231B1 Licenses, and no right to manufacture products embodying such patents or technology was granted to Fluid under the related Manufacturing Agreements.

46. HEG provided no consideration for the 231B1 Licenses or the related Manufacturing Agreements.

47. The purported 231B1 Technology was essential consideration for the 231B1 Licenses and related Manufacturing Agreements and the failure of the consideration vitiates

those agreements in their entirety. If Fluid had known that there was no 231B1 Technology, it would not have entered into the 231B1 Licenses or the related Manufacturing Agreements.

48. Fluid has no adequate remedy at law.

THIRD CLAIM:

**RESCISSION OF THE 102B1 LICENSES AND RELATED MANUFACTURING
AGREEMENTS FOR FAILURE OF CONSIDERATION**

No License for the '971, '047 or '573 Patents

49. The 102B1 Licenses do not include licenses for continuations or divisions of the '102B1 Patent.

50. The '971 Patent is a division of the '101B1 Patent.

51. The '047 Patent is a division of the '971 Patent.

52. The '573 Patent is a division of the '047 Patent.

53. As divisional applications, the claims and subject matter of the '047, '971 and '573 Patents are related to the claims and subject matter of the '102B1 Patent.

54. The '047 and '971 Patents were pending at the time of execution of the 102B1 Licenses.

55. If the practice of the 102B1 Technology purportedly licensed to Fluid under the 102B1 Licenses requires the practice of the subject matter of any of the '047 '971 and '573 Patents, then the rights granted to Fluid under the related Manufacturing Agreements cannot be fully exploited in the oil and gas industry without separate licenses to the '047 '971 and '573 Patents.

56. If the '047, '971 and '573 patents are not covered by the 102B1 Licenses and the practice of the '047, '971 and '573 patents is required for the practice of the 102B1 Licenses, there was no consideration for the 102B1 Licenses and the related Manufacturing Agreements.

57. The right to fully exploit the 102B1 Technology in the oil and gas industry was essential consideration for the 102B1 Licenses and the related Manufacturing Agreements and the failure of the consideration vitiates those agreements in their entirety. If Fluid knew that there were pertinent divisional patents pending at the time of execution, to which it was not granted licenses, it would not have entered into the agreements.

FOURTH CLAIM:

**RESCISSION OF THE 102B1 LICENSES AND RELATED MANUFACTURING
AGREEMENTS FOR FAILURE OF CONSIDERATION**

Invalidity of the '102B1 Patent

58. All claims of the '102B1 Patent are invalid pursuant to 35 U.S.C. § 112, first paragraph.

59. Claims 1 through 9 are invalid as lacking enablement for the claim term “complex substituted keto-amine hydrochloride.”

60. Claims 1 through 9 are also invalid as lacking an adequate written description for the claim term “ethoxylate.”

61. Because the claims of the '102B1 Patent are invalid, HEG provided no consideration for the 102B1 Licenses.

62. The right to exploit the 102B1 Technology, including the '102B1 Patent, was essential consideration for the 102B1 Licenses and the related Manufacturing Agreement and the failure of the consideration vitiates those agreements in their entirety. If Fluid knew that the patents were invalid, it would not have entered into the agreements.

Invalidity of the '971, '047, and '573 Patents

63. Even if the 102B1 Licenses included divisional patents, which they do not, the '971, '047 Patents are invalid pursuant to 35 U.S.C. § 112, first paragraph.

64. All claims of the '971 Patent are invalid under 35 U.S.C. § 112, first paragraph, as lacking enablement or as lacking an adequate written description, or both.

65. Claims 1 through 14 of the '971 Patent are invalid as lacking enablement for the claim term "complex substituted keto-amine hydrochloride."

66. Claims 1, 2, 4, 6 through 9, 11, 13 and 14 of the '971 Patent are invalid for lacking an adequate written description for the claim term "ethoxylate."

67. Claims 5, 7, and 12 of the '971 Patent are invalid as lacking enablement for the claim term "40-60 wt % HCl."

68. The single claim of the '047 Patent is invalid under 35 U.S.C. § 112, first paragraph, as lacking enablement or as lacking an adequate written description, or both.

69. The single claim of the '047 Patent is invalid as lacking enablement for the claim term "55 wt % HCl."

70. All claims of the '573 Patent are invalid under 35 U.S.C. § 112, first paragraph, as lacking enablement or as lacking an adequate written description, or both.

71. Claims 1 through 5 of the '573 Patent are invalid as lacking enablement for the claim term "complex substituted keto-amine hydrochloride."

72. Claims 1 through 4 of the '573 Patent are invalid for lacking an adequate written description for the claim term "ethoxylate."

73. Claim 5 of the '573 Patent is invalid as lacking enablement for the claim term "40-60 wt % Hcl."

74. Because the '971, '047, '573 Patents are invalid, even if they were included in the 102B1 Licenses, the 102B1 Licenses lack consideration.

75. The right to exploit the 102B1 Technology, including the '971, '047, '573 Patents, if they were licensed as divisions under the 102B1 Licenses, was essential consideration for the 102B1 Licenses and the related Manufacturing Agreements and the failure of the consideration vitiates those agreements in their entirety. If Fluid knew that the patents covered under 102B1 Licenses were invalid, Fluid would not have entered into the agreements.

76. Fluid has no adequate remedy at law.

FIFTH CLAIM (IN THE ALTERNATIVE):

DECLARATORY JUDGMENT OF PATENT INVALIDITY

77. In the event that the Tribunal determines that (1) the Agreements are valid, and (2) the patent claims are subject to arbitration, Fluid is entitled to a declaratory judgment of invalidity of the '102B1 '047, '971 and '573 Patents.

78. All claims of the '102B1 '047, '971 and '573 Patents are invalid pursuant to 35 U.S.C. § 112, first paragraph, for the reasons set forth above.

79. To resolve the issues of patent infringement raised by HEG, Fluid is entitled to a declaratory judgment that the '102B1 '047, '971 and '573 Patents are invalid.

SIXTH CLAIMS (IN THE ALTERNATIVE):

DECLARATION OF NON-INFRINGEMENT

80. In the event that the Tribunal determines that (1) the Agreements are valid, (2) the patent claims are subject to arbitration, and (3) the patents were valid, Fluid is entitled to a declaratory judgment of non-infringement of the '102B1 '047, '971 and '573 Patents.

81. Fluid has not infringed and is not infringing any valid and enforceable claim of the '102B1 '047, '971 or '573 Patents.

82. To resolve the legal and factual questions raised by HEG, Fluid, Purdy, and Thatcher are entitled to a declaration that they are not infringing any valid and enforceable claim of the '102B1 '047, '971 or '573 Patents.

STATEMENT OF RELIEF

83. By reason of the foregoing, Fluid is entitled to an award of the following relief against defendants:

- (a) rescission of the Agreements;
- (b) a declaration that the '102B1 '047, '971 and '573 Patents are invalid;
- (c) a declaration that Fluid has not infringed the '102B1 '047, '971 and '573 Patents;
- (d) restitution of all royalties and other payments made under the Agreements, in the sum of \$871,870;
- (e) damages, including lost profits, of approximately \$3,500,000;
- (f) punitive damages;
- (g) pre-award and post-judgment interest;
- (h) attorneys' fees;
- (i) costs, including the fees and expenses of the arbitrators, costs of any experts of other assistance required by the tribunal, and fees and expenses of the administrator; and
- (j) such other relief as the arbitrators deem appropriate.

ARBITRATOR NOMINATION

Fluid nominates the following as an arbitrator:

Michael B. Chavies
Akerman LLP
One Southeast Third Avenue, 25th Floor
Miami, FL 33131
Tel: 305.374.5600
michael.chavies@akerman.com

Dated: New York, NY
January 15, 2015

Respectfully submitted,

TORYS LLP

/s/ David Wawro

David Wawro

Jaclyn J. Leader

1114 Avenue of the Americas, 23rd Floor

New York, New York 10036

Telephone: (212) 880-6288

Facsimile: (212) 682-0200

dwawro@torys.com

jleader@torys.com

*Attorneys for Fluid Energy Group, Ltd.,
Fluid Lux S.A.R.L., Clay Purdy and
Darren Thatcher*

EXHIBIT “B”

**IN THE MATTER OF THE
ARBITRATION BETWEEN:**

FLUID ENERGY GROUP LTD. and FLUID LUX S.A.R.L.,)
)
)
 Claimants,)
 v.)
)
 HEARTLAND ENERGY GROUP, LTD,)
 JOHN MACDONALD)
 and STEPHEN ROWLEY)
)
 Respondents.)

ICC Case No. 20282/RD

HEARTLAND ENERGY GROUP, LTD.)
)
 Counter-Claimant,)
)
 v.)
)
 FLUID ENERGY GROUP, LTD., FLUID LUX)
 S.A.R.L., DARREN THATCHER and)
 CLAY PURDY)
)
 Counterclaim Respondents.)

RESPONDENT HEARTLAND ENERGY GROUP, LTD'S
AMENDED COUNTERCLAIM

Respondent/Counter-Claimant, HEARTLAND ENERGY GROUP, LTD. (“HEG” or “Respondent” or “Counterclaimant”), by and through its undersigned counsel, hereby files this Amended Counterclaim against Claimants/Counter-Respondents, FLUID ENERGY GROUP, LTD. (“FLUID ENERGY”). FLUID LUX S.A.R.L. (“FLUID LUX”), CLAY PURDY (“Mr.

Purdy”) and DARREN THATCHER (“Mr. Thatcher”) (collective referred to as “Claimants”) and state the following as grounds:

THE PARTIES

1. HEARTLAND ENERGY GROUP, LTD. is a corporation formed under the laws of the Republic of Seychelles with an office located at Suite 15, 1st Floor Oliaji Trade Center, Francis Street, Victoria, Mahe, Seychelles.

2. FLUID ENERGY GROUP, LTD. is a corporation formed under the laws of Alberta, Canada with an office located at 214 11th Avenue SE, Calgary, Canada T2G 0X8.

3. FLUID LUX S.A.R.L. is a limited liability company formed under the laws of Luxembourg with an office located at 73 Cote d’Eich, L-1450 Luxembourg.

4. CLAY PURDY (“Mr. Purdy”) is an individual and officer of FLUID ENERGY and FLUID LUX who personally participated in, induced, directed, controlled and financially benefitted from the unlawful conduct alleged herein.

5. DARREN THATCHER (“Mr. Thatcher”) is an individual and officer of FLUID ENERGY and FLUID LUX who personally participated in, induced, directed, controlled and financially benefitted from the unlawful conduct alleged herein.

FORUM AND GOVERNING LAW

6. HEG and FLUID ENERGY were parties to a Manufacturing Agreement which was originally dated October 12, 2012 and was then amended and restated on June 18, 2013 (“Fluid Energy Manufacturing Agreement”). *See* Exhibit A to Request for Arbitration.

7. The Fluid Energy Manufacturing Agreement includes an arbitration clause which calls for arbitration with the International Chamber of Commerce (“ICC”) to be held in ICC’s Florida, USA office. *See* Exhibit A to Request for Arbitration at §16.1.

8. HEG and FLUID ENERGY were also parties to two license agreements originally dated October 10, 2012¹ and then amended and restated on June 18, 2013 (“Fluid Energy License Agreements”). *See* Exhibits B and C to Request for Arbitration.

9. The Fluid Energy License Agreements likewise contain an arbitration and governing law clause identical to the clause in the Fluid Energy Manufacturing Agreement².

10. HEG and FLUID LUX were also parties to a similar manufacturing agreement dated October 10, 2012 and amended and restated on June 18, 2013 (“Fluid Lux Manufacturing Agreement”). *See* Exhibit D to Request for Arbitration.

11. HEG and FLUID LUX were also parties to two license agreements originally dated October 10, 2012³ and then amended and restated on June 18, 2013 (“Fluid Lux license Agreements”). *See* Exhibit E and F to Request for Arbitration.

12. The Fluid Lux Manufacturing and License Agreements all contain an arbitration and governing law clause identical to the clauses in the Fluid Energy Manufacturing and License Agreements. For ease of reference, the license and manufacturing agreements between HEG and

¹ Although Exhibit B has a date of October 10, 2013, this was a typographical error. The original agreement was entered into on October 10, 2012.

² *See* Exhibit A to Request for Arbitration at §16.1; Exhibit B to Request for Arbitration at §§20-21; and Exhibit C to Request for Arbitration at §§20-21.

³ Although Exhibit E has a date of October 10, 2013, this was a typographical error. The original agreement was entered into on October 10, 2012.

FLUID ENERGY on the one hand and HEG and FLUID LUX on the other hand will be referred to as “the Agreements” throughout unless referencing a specific agreement.

13. This case also arises, in part, under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 154(d), 271, 281, 283, 284, 285 and 294 and under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, including 15 U.S.C. §§ 1116, 1117, and 1125(a).

14. This Court has subject matter jurisdiction over both the patent infringement and trademark infringement claims in this case in that they both arise out of the Agreements entered into between the parties.

15. Mr. Purdy and Mr. Thatcher are proper Counterclaim Respondents⁴ to HEG’s Counterclaims for patent and trademark infringement in that Mr. Purdy and Mr. Thatcher both personally participated in, directed, controlled and financially benefitted from the unlawful infringement of HEG’s patents and trademarks as discussed herein.

FACTUAL BACKGROUND

16. This case and the relationship between the parties goes back long before HEG and FLUID ENERGY and/or FLUID LUX entered into the Agreements referenced above.

⁴ Note that unlike Claimants’ contract claim against Mr. MacDonald and Mr. Rowley individually, Respondent HEG’s counterclaims for patent and trademark infringement properly include Mr. Thatcher and Mr. Purdy in their individual capacities. This is due to the nature of such intellectual property claims. *See, e.g., Mayo Clinic Jacksonville v. Alzheimer’s Inst. of Am., Inc.*, 683 F. Supp. 2d 1292, 1299 (M.D. Fla. 2009) (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1578-79 (Fed. Cir. 1986) for the proposition that it is not necessary to pierce the corporate veil before holding a corporate officer personally liable for patent infringement); *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1477-78 (11th Cir. 1991) (stating that “[n]atural persons, as well as corporations, may be liable for trademark infringement under the Lanham Act” and finding corporate defendant’s CEO personally liable for corporate defendant’s infringement).

17. Before HEG was incorporated, there was a company with the name Heartland Solutions, Inc. (“HSI”). Respondent Stephen Rowley (“Mr. Rowley”) was the owner of HSI, and HSI had a Distributor Agreement with Environmental Manufacturing Solutions, LLC (“EMS”) pertaining to a number of different products relevant to the concrete industry.

18. EMS is a chemical company based out of Melbourne, Florida that specializes in providing safe solutions to replace harsh and dangerous acids, solvents and caustics used so prevalently across many different industries. Respondent John MacDonald (“Mr. MacDonald”) is the owner of EMS.

19. Beginning in 2009, in addition to targeting the concrete industry, HSI also began targeting the Oil & Gas industry with EMS’s Barracuda 10K product. HSI, with the knowledge and permission of EMS, re-branded and re-labeled the products as Oil Safe Ar®.

20. Around the same time, Mr. MacDonald incorporated Environmental Manufacturing Solutions Oil and Gas Exploration Products, LLC for the purpose of promoting its products to the Oil & Gas industry. At this time, since HSI was utilizing the name Oil Safe Ar®, Mr. MacDonald decided to come up with a new name to brand his patented synthetic replacements for acids, which is where the name ENVIRO-SYN® came from.

21. Mr. MacDonald and other EMS agents came up with the name at EMS’s offices in Melbourne, Florida. The ENVIRO-SYN® name is a combination of Environmental Manufacturing Solutions’ name and their other trademark registration, SYNTECH®. A true and correct copy of the Trademark Registrations for ENVIRO-SYN® and SYNTECH® are attached hereto as Exhibits “A” and “B” respectively.

22. HEG was incorporated on June 21, 2012 for the purpose of manufacturing, distributing and licensing its ENVIRO-SYN® and Oil Safe Ar® products around the world. HEG is the owner of the entire right, title and interest of United States Trademark Registration No. 4,224,628 on the Principal Register for the mark ENVIRO-SYN® for “synthetic replacement for acids, namely, hydrochloric, phosphoric, hydrofluoric, sulfuric, acetic, and formic acids used in dissolving and removing mineral deposits” in Class 001. *See* Exhibit “A” attached hereto and incorporated herein by reference.

23. Although the ENVIRO-SYN® trademark registration indicates a first use in commerce date of December 2, 2011 in the trademark registration, HEG shipped its first shipment of ENVIRO-SYN® across state lines in November of 2010 and has been using the trademark ever since. In any event, HEG’s first use of the mark, as well as HEG’s trademark application filing date for the mark, pre-date the Agreements at issue.

24. As part of testing the Barracuda 10K formula (re-labeled as Oil Safe Ar® and ENVIRO-SYN®) for use in the Oil & Gas industry, Mr. MacDonald and Mr. Rowley determined that the formula was not strong enough and that it had certain chelating agents that needed to be removed to increase the effectiveness of the product downhole.

25. During this same time, Mr. Thatcher, the current President and COO of FLUID ENERGY and FLUID LUX, was the V.P. of Operations and Technology for the Optifrac Division of Mud Master Drilling Fluid Service (“Mud Master”).

26. Mud Master was a distributor for HSI wherein HSI sold to Mud Master Oil Safe Ar®, and Mud Master, as a distributor, then sold the product to end users.

27. Mr. Rowley, the owner of HSI at the time, and Mr. Thatcher, the V.P. of Mud Master, worked together on a large “frac” job in Turner Valley, Alberta Canada in October of 2011 utilizing the Oil Safe Ar® product for the job.

28. At the frac site there was a hot oiler truck that heats and transfers the frac fluids on site. Mr. Thatcher and Mr. Rowley transferred the Oil Safe Ar® into the hot oiler truck and began to notice the aluminum fittings fail due to corrosion. Mr. Thatcher began to panic. Mr. Thatcher and Mr. Rowley immediately contacted Mr. MacDonald, and Mr. MacDonald instructed Mr. Thatcher and Mr. Rowley that chemical doubling takes place with heating and also reminded them that the new version of Oil Safe Ar®, which was created at Mr. Thatcher’s continued request, was far more active than the original rebranded Barracuda 10K and that they needed to switch out the fittings to stainless steel and/or to stop using the hot oiler truck and finish the job.

29. Mr. Thatcher and Mr. Rowley chose to complete the job with a vacuum truck that was equipped with stainless fittings. The job was completed without error, pumping in excess of 125,000 gallons of Oil Safe AR®.

30. Mr. Thatcher had first-hand knowledge and experience with the fact that Oil Safe Ar®, which was also branded ENVIRO-SYN®, would corrode aluminum and soft steel back in October of 2011, one year prior to entering into the Agreements referenced herein and prior to FLUID ENERGY and FLUID LUX’s incorporation.

31. FLUID ENERGY and FLUID LUX, through Mr. Thatcher, were readily aware that ENVIRO-SYN® would corrode aluminum and soft steel when they first opened their doors because Mr. Thatcher went to those companies armed with this knowledge he acquired through

his experience at Mud Master/Optifrac. Additional proof that FLUID was aware of corrosive effect on aluminum and soft steel from the very beginning is as follows:

- i. FLUID's own ENVIRO-SYN label wherein it clearly states "WARNING! When pumping this product it is strongly recommended to use manufacturer approved hose couplings and fittings. DO NOT USE ALUMINUM FITTINGS. *See Exhibit "C" attached hereto.*
- ii. A PowerPoint presentation prepared by Darren Thatcher, along with the email correspondence from Mr. Thatcher on October 24, 2012 including a statement at page 7 of the presentation that certain precautions need to take place when pumping the product because the product will react with certain soft metals such as Aluminum and Magnesium. *See Exhibit "D" attached hereto.*
- iii. Email correspondence between Kevin O 'Donoghue and John MacDonald from June of 2013 pertaining to labels for ENVIRO-SYN CSR and ENVIRO-SYN HCR, created by FLUID, which include a WARNING regarding Aluminum. *See Exhibit "E" attached hereto.*

32. More importantly, Claimants claim that Respondents fraudulently induced Claimants into the Agreements by repeatedly assuring Claimants that the patented technology was non-corrosive on steel and aluminum is not only false, but is a complete fabrication on the part of Claimants solely done to try and rescind the Agreements.

33. Although it is true that the Licensed Products are non-DOT regulated, this is only relevant in the United States and has absolutely nothing to do with any of the Countries for which Claimants were licensed to sell the Licensed Products.

34. Moreover, each piece of literature attached to the Request for Arbitration as Exhibits H-K are documents that were either falsified by Claimants (Exhibit H) or documents pertaining to Oil Safe Ar® that were never provided to FLUID by any of the Respondents (Exhibits I-K) as alleged by Claimants.

35. In fact, such documents were never reviewed, discussed or even mentioned during any negotiations between Claimants and Respondents and in fact are only being used by Claimants as a way to rescind the Agreements.

36. Claimants also claim in their Request for Arbitration that the two testing reports attached as Exhibits L and M are fraudulent. As seen in the Mutual Confidentiality and Non-Disclosure Agreement, which is attached hereto as Exhibit “F,” EMS did in fact hire Del Tech Laboratory Services to perform the tests as well as NASA Support Labs, which will also be proven through the testimony of Ms. Alicea, the Director of both labs.

37. Furthermore, any claims about ENVIRO-SYN® being corrosive are the direct result of Claimants’ own actions in increasing the levels of HCL from the prescribed 20 baume to 22 baume without HEG’s knowledge and consent. True and correct email correspondence wherein Mr. Thatcher admits to adding in HCL, which would increase the corrosiveness of the products are attached hereto as Exhibit “G.”

38. Upon information and belief the inhibitor that Claimants are adding to the Licensed Products without HEG’s authorization is identified as NALCO® ASP560. A true and correct copy of the Material Safety Data Sheet (“MSDS”) for NALCO® ASP560 is attached hereto as Exhibit “H.”

39. As seen in Exhibit “H” under Section 10, NALCO® ASP560 should not be combined or come into contact with products that contain strong alkalies like “ammonia and its solutions.” Claimants should be well aware of the fact that the urea that is in the Licensed Products is high in ammonia.

40. Likewise, under Section 14 of the MSDS it states that NALCO® ASP560 is DOT corrosive for transportation purposes. Therefore, any concern on the part of Counterclaim Respondents that its products are now DOT corrosive is a result of their own deliberate actions, not the actions of HEG, Mr. MacDonald or Mr. Rowley. *See* Exhibit “H.”

41. Upon information and belief, the only reason the alleged third party tests referenced at paragraph 14 of the Request for Arbitration came back with a mmpy higher than 6.25 is because Claimants are adding products like NALCO® ASP560 to the Licensed Products without the authorization of HEG and are therefore increasing the corrosive nature of the product as well as causing the product to be DOT corrosive and DOT regulated.

42. Mr. MacDonald expressed his concerns about the changes being made by FLUID LUX and FLUID ENERGY and the corrosive effect of such changes and also made it very clear that HEG would not accept any legal liability for their actions. A true and correct copy of such email correspondence is attached hereto as Exhibit “I.”

43. At the beginning of the relationship between the parties, HEG would manufacture the Licensed Products and provide such products to FLUID LUX and FLUID ENERGY for sale.

44. The Licensed Products as sold to Claimants by Respondent HEG were always considered Non-DOT regulated and below 6.25 mmpy. Therefore, any issues as it relates to an increase in corrosiveness of the product being DOT regulated are a direct result of Claimants’ actions, not Respondents’.

45. From December 10, 2012 through December 12, 2012, Mr. MacDonald and Mr. Rowley, as officers of HEG, trained Mr. Purdy and Mr. Thatcher on how to create their own manufacturing facility, what reactors they needed to purchase, what pumps they needed to

purchase and exactly how to formulate the Licensed Products using methods that are covered by HEG's patented technology and the Agreements. All such training occurred at HEG's manufacturing facility in Grain Valley, MO, and no FLUID employees other than Mr. Purdy and Mr. Thatcher were present.

46. From February 17, 2013 through February 19, 2013, Mr. Purdy and Mr. Thatcher visited HEG's manufacturing facility to learn the ins and outs of the process by which the Licensed Products are manufactured and in particular how to react batches.

47. From April 1, 2013 through April 4, 2013, Mr. Rowley and Mr. Stan Lucas (HEG's Operations Manager) flew to Calgary, Canada to assist Counterclaim Respondents with the set up and installation of their tanks and reactors. Mr. Rowley and Mr. Lucas worked closely with Mr. Thatcher and Mr. Purdy throughout the process.

48. From April 14, 2013 through April 17, 2013, Mr. Rowley and Mr. Lucas returned to Calgary, Canada to finalize the installation of the system and to complete the oversight of Counterclaim Respondents' first batch of Licensed Product produced at their facility. This was done to ensure that Counterclaim Respondents knew exactly how to produce the batches as per the methods contained in HEG's patents and the Agreements between the parties.

49. From August 18, 2013 through August 20, 2013, Mr. Rowley and Mr. MacDonald visited FLUID ENERGY to inspect the facility to ensure that everything was being done as instructed.

50. Over the past year, Claimants have committed numerous violations of the Agreements as well as committed other actions, such as investor fraud and breach of fiduciary duty, which are not part of this proceeding, but are relevant nonetheless. Claimants are now

attempting to claim fraud in the inducement as a way to avoid having to pay all that is owed to HEG and as a way to save face with their shareholders and investors.

51. As seen in the Audit Report dated January 22, 2014 and attached hereto as Exhibit “J” FLUID has continually violated the Agreements by (1) failing to provide statements within fifteen (15) days after the last day of each month⁵; making late payments and underpayment throughout the 2013 calendar year⁶; failing to meet the minimum production levels for any quarter in the year 2013⁷; and by improperly selling competing goods (Matrix 100⁸).

52. Additional violations include, but are not limited to:

(a) Falsely stating “**worldwide**” rights on the www.fluidenergy.com website, when the Agreements between the parties were only for specified territories, not worldwide. *See* Exhibit “K.”

(b) Falsely stating that FLUID had rights to the patented technology in the **United States** when no such rights existed. *See* Exhibit “L.”

(c) Failing to pay past due invoices in the amount of \$222,650.00 USD. *See* Exhibit “M.”

(d) Offering for sale and selling the ENVIRO-SYN® patented products outside their territory to ENOVO and North American Chemical, companies in the U.S. *See* Exhibit “N.”

(e) Falsely labeling the Licensed Products as DfE approved when the labels were never approved and FLUID never asked HEG to obtain approvals on the labels. *See* Exhibit “O.”

(f) Falsely inducing investors to invest in FLUID for an amount close to or around \$10 million dollars under the guise of an exclusive worldwide license with HEG for the patented ENVIRO-SYN® products when no such worldwide license existed⁹;

(g) Failing to pay HEG royalties in the amount of \$648,810.00 USD ;

⁵ *See* Paragraph 6(a) of the License Agreements.

⁶ *See* Paragraphs 6.3 and 6.5 of the Manufacturing Agreement.

⁷ *See* Paragraphs 5.1 and 5.2 of the Manufacturing Agreements.

⁸ *See* Paragraph 3.2 of the Manufacturing Agreements.

⁹ Upon information and belief, Clay Purdy blatantly misrepresented to investors that FLUID had worldwide rights to the patented HEG technology in order to obtain investments in FLUID.

(h) Falsely stating in a post on the www.globalpetroleum.com website that the ENVIRO-SYN® products were “**developed and patented by Fluid Energy Group**” when the ENVIRO-SYN® products were developed and patented by HEG. *See* Exhibit “P.”

(i) Admitting in email correspondence that the technology is HEG’s and acknowledging that FLUID needed to get permission to send out news releases, but then falsely stating in the proposed news release that FLUID has “**exclusive oil & gas industry manufacturing and distribution rights**” in an attempt to garner more investors under false pretenses. *See* Composite Exhibit “Q”¹⁰.

(j) Falsely stating on Todnem’s website that “Enviro-Syn is the trade name of a line of environmentally and HSE friendly acid and caustic replacements **developed and patented by Fluid Energy Group**.” *See* Exhibit “R.”

53. The FLUID Claimants sent Respondents a letter attempting to rescind the Agreements on April 11, 2014 on an allegation on fraud in the inducement. A true and correct copy of the letter is attached hereto as Exhibit “S.”

54. Respondent, through the undersigned, responded to the letter refuting the allegations of fraud in the inducement and alleging many of the violations addressed above. A true and correct copy of the letter is attached hereto as Exhibit “T.”

55. Claimants are trying to pull the wool over this Panel’s eyes by falsely claiming fraud in the inducement because it is the only way Claimants can get out of the Agreements that they have repeatedly violated.

56. After trying to resolve the serious breaches by Claimants to no avail, and after receiving a copy of the Request for Arbitration, on June 12, 2014, Respondents through the undersigned attorney served a Notice of Termination on counsel for Claimants. A true and correct copy of the Notice of Termination is attached hereto as Exhibit “U.”

¹⁰ It should be noted that John MacDonald never authorized FLUID to send out this news release.

57. As per paragraphs 4(c) and 4(d) of the License Agreements and paragraph 14.2(c) of the Manufacturing Agreements, the termination is effective 30 days from June 12, 2014 if Claimants failed to cure such breach.

58. Claimants failed to respond to the Termination Letter or cure any of the breaches addressed in the letter.

59. As per paragraphs 4(b) and 22 of the License Agreements, any manufacture, sale or offer for sale of the Licensed Products after July 12, 2014 is not only considered patent infringement, but is breach of the covenant not to compete, which includes a two year non-compete provision. To the extent that the manufacture and sale also includes the ENVIRO-SYN® mark, it is also trademark infringement.

60. As admitted to by Claimants and as seen in the Agreements, Respondent HEG agreed to license certain patented technology known as the “231B1” and “102B1” technologies.

61. The “231B1” and “102B1” technologies refer to several patents either owned or exclusively licensed by HEG.

62. The patents are relevant to this case in that they were licensed to Claimants and, since the termination of the Agreements, are currently being infringed by Claimants, Mr. Purdy and Mr. Thatcher through use, sales and offers for sale in the United States. These patents include, but are not limited to, U.S. Patent Nos. 8,580,047, 8,430,971 and 8,784,573.

63. HEG is the exclusive licensee to U.S. Patent No. 8,850,047 (“the ‘047 Patent”) titled “Methods for using improved urea hydrochloride compositions.” A true and correct copy of the exclusive license and the ‘047 Patent are attached hereto and incorporated herein as Exhibits “V” and “W” respectively.

64. HEG is the exclusive licensee to U.S. Patent No. 8,430,971 (“the ‘971 Patent”) titled “Composition for treatment of drilling fluid and associated methods.” A true and correct copy of the exclusive license and the ‘971 Patent are attached hereto and incorporated herein as Exhibits “X” and “Y” respectively.

65. HEG is the exclusive licensee to U.S. Patent No. 8,784,573 (“the ‘573 Patent”) titled “Methods for using improved urea hydrochloride compositions” A true and correct copy of the exclusive license and the ‘573 Patent are attached hereto and incorporated herein as Exhibits “Z” and “AA” respectively.

66. Claimants, through the direction, control, with the financial benefit and with the actual knowledge of Mr. Thatcher, are manufacturing, offering for sale and selling products covered under the ‘047, ‘971 and ‘573 Patents to customers throughout the United States, which infringe one or more of the claims of the ‘047, ‘971 and ‘573 Patents literally and/or through the doctrine of equivalents.

67. Mr. Thatcher has further induced the Claimants to infringe the ‘047, ‘971 and ‘573 Patents by actively and knowingly aiding and abetting Claimants’ infringement. In light of Mr. Thatcher’s conduct alleged herein, Mr. Thatcher was faced with not having a license to use the Licensed Products, yet, in an attempt to prevent the FLUID companies from going under, he induced the companies to infringe the Patents by continuing to manufacture, offer for sale and sell products covered under the ‘047, ‘971 and ‘573 Patents to customers throughout the United States.

68. Claimants, through the direction, control, with the financial benefit and with the actual knowledge of Mr. Purdy are manufacturing, offering for sale and selling products covered

under the '047, '971 and '573 Patents to customers throughout the United States, which infringe one or more of the claims of the '047, '971 and '573 Patents literally and/or through the doctrine of equivalents.

69. Mr. Purdy has further induced the Claimants to infringe the '047, '971 and '573 Patents by actively and knowingly aiding and abetting Claimants' infringement. In light of Mr. Purdy's conduct alleged herein, Mr. Purdy was faced with not having a license to use the Licensed Products, yet, in an attempt to prevent the FLUID companies from going under, he induced the companies to infringe the Patents by continuing to manufacture, offer for sale and sell products covered under the '047, '971 and '573 Patents to customers throughout the United States.

70. Claimants, through the direction and control, and with the financial benefit and actual knowledge of Mr. Purdy and Mr. Thatcher are using, manufacturing, offering for sale and selling products under HEG's trademarked name ENVIRO-SYN® and have in fact filed for trademark registrations for ENVIRO-SYN in the United States. Mr. Purdy and Mr. Thatcher were the moving force behind the infringing use of the mark. True and correct copies of Claimants' unauthorized use of the ENVIRO-SYN® mark and trademark applications are attached hereto as Composite Exhibit "BB." Note that Mr. Purdy signed both applications and falsely declared that "no other person, firm, corporation, or association has the right to use the mark in commerce [...]," knowing full well that HEG owned the ENVIRO-SYN® mark and had actually licensed it for Claimants' use.

71. Claimants, through the direction and control, and with the financial benefit and actual knowledge of Mr. Purdy and Mr. Thatcher are also continuing to utilize certain videos on

their website at the following link <http://www.fluidenergygroup.com/about-us/video-gallery/>, which were created during the licensed period utilizing the Licensed Products. Such videos are now false and misleading in that Claimants are attempting to pass off their products as genuine HEG products when in fact they are not.

72. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's use of the ENVIRO-SYN® mark in association with the sale of infringing products is not authorized or licensed.

73. Respondent has been damaged as a result of Claimants' activities described herein.

74. Respondent has performed all conditions precedent to be performed by Respondent or the conditions have occurred. Respondent has been forced to retain the law firm of Beusse Wolter Sanks & Maire, P.A. for representation in this action.

CLAIM I
BREACH OF CONTRACT
(Against FLUID ENERGY)

75. HEG hereby adopts and re-alleges paragraphs 1-12, 16-20, 24-59, 66-74 above as fully and completely as if set forth herein.

76. HEG and FLUID ENERGY entered into one Manufacturing Agreement and two License Agreements pertaining to the manufacture and sale of certain Licensed Products.

77. FLUID ENERGY, as described in more detail above, breached the following provisions of the Fluid Energy Manufacturing Agreement:

- a. Section 2.5- FLUID ENERGY breached Section 2.5 of the Manufacturing Agreement by marketing and selling the Licensed Products outside of FLUID

ENERGY's territory without the written consent of HEG and during the term of the Agreement.

- b. Section 2.10- FLUID ENERGY breached Section 2.10 of the Manufacturing Agreement by conducting unauthorized testing from a third-party laboratory without prior approval from HEG.
- c. Section 3.2- FLUID ENERGY breached Section 3.2 of the Manufacturing Agreement by selling competitive goods during the term of the Agreements.
- d. Section 5.1- FLUID ENERGY breached Section 5.1 of the Manufacturing Agreement by failing to meet the quota of \$1,000,000 worth of Licensed Products sold for the year 2013.
- e. Section 5.2- FLUID ENERGY breached Section 5.2 of the Manufacturing Agreement by failing to meet the quotas, failing to amend its rights to non-exclusive rights as per 5.2(b) for 2014, failing to make payment equal to the shortfall of such quota to maintain exclusive rights as per 5.2(a) for 2014, while at the same time representing to investors, customers, dealers and via the web that FLUID ENERGY maintained exclusive rights.
- f. Section 6.3- FLUID ENERGY breached Section 6.3 of the Manufacturing Agreement by failing to make payments within 30 days of the date of invoice.
- g. Section 6.5 FLUID ENERGY breached Section 6.5 of the Manufacturing Agreement by failing to pay 8.0% interest on all overdue balances outstanding.

- h. Section 11.1 FLUID ENERGY breached Section 11.1 of the Manufacturing Agreement by improperly and without authorization obtaining a trademark registration in Canada for ENVIRO-SYN as well as filing trademark applications in the U.S. for ENVIRO-SYN.
- i. Section 11.2 FLUID ENERGY breached Section 11.2 of the Manufacturing Agreement by improperly telling investors and potential investors that FLUID ENERGY was the owner of the Patents and Licensed Technology as well as attempting to sell such Licensed Products outside of FLUID ENERGY's licensed territory.

78. FLUID ENERGY, as described in more detail above breached the following provisions of the Fluid Energy License Agreements:

- a. Section 4(B) and 22 – FLUID ENERGY breached Sections 4(B) and 22 by making, using, selling and offering to sell the Licensed Products after July 12, 2014 in breach of the two year non-compete provision.
- b. Section 5(A) FLUID ENERGY breached Section 5(A) of the License Agreements by failing to pay royalties for the months of January – June, 2014 and failing to meet the sales minimum by the deadline of December 31, 2013.
- c. Section 6(A) FLUID ENERGY breached Section 6(A) of the License Agreements by failing to furnish HEG written statements under oath specifying the total number of products sold during the preceding month for the months of October 2012-December 2013 and March-June of 2014.

- d. Section 6(B) FLUID ENERGY breached Section 6(B) of the License Agreements by failing to make royalty payments for the months of January – June, 2014.

79. HEG has performed all conditions precedent to bring this cause of action or all of the conditions have occurred.

80. As a direct and proximate result of FLUID ENERGY's breach of the provisions outlined above, HEG has suffered loss and damage.

81. HEG has been damaged in an amount that is at least equal to \$1,873,755.67 which takes into account the four (4) invoices totaling \$224,945.67¹¹, unpaid royalties to date amounting \$648,810.00 and the unpaid exclusivity fee of \$1,000,000.00.

WHEREFORE, HEG prays for the following relief against FLUID ENERGY:

a. That FLUID ENERGY be required to pay HEG the actual damages suffered as a result of the breach, including, but not limited to, all royalties due and owing, all payments for products received, the unpaid exclusivity fee and any other damages as a result of Claimants' conduct.

b. That HEG recover its costs associated with this proceeding, including the arbitrators' fees, costs of any experts or any other assistance required by the tribunal and fees and expenses of the administrator as per Article 37(4).

c. That HEG recover pre-award and post-judgment interest at the amount allowed under the Agreements (8.0%).

¹¹ True and correct copies of the invoices are attached hereto as Exhibit CC.

d. That HEG be provided such further and other relief as this tribunal deems just and proper.

CLAIM II
BREACH OF CONTRACT
(Against FLUID LUX)

82. HEG hereby adopts and re-alleges paragraphs 1-12, 16-20, 24-59, 66-74 above as fully and completely as if set forth herein.

83. HEG and FLUID LUX entered into one Manufacturing Agreement and two License Agreements pertaining to the manufacture and sale of certain Licensed Products.

84. FLUID LUX, as described in more detail above breached the following provisions of the Fluid Lux Manufacturing Agreement:

- a. Section 2.5- FLUID LUX breached Section 2.5 of the Manufacturing Agreement by marketing and selling the Licensed Products outside of FLUID LUX's territory without the written consent of HEG and during the term of the Agreement.
- b. Section 2.10- FLUID LUX breached Section 2.10 of the Manufacturing Agreement by conducting unauthorized testing from a third-party laboratory without prior approval from HEG.
- c. Section 3.2- FLUID LUX breached Section 3.2 of the Manufacturing Agreement by selling competitive goods during the term of the Agreements.
- d. Section 5.1- FLUID LUX breached Section 5.1 of the Manufacturing Agreement by failing to meet the quota of \$1,000,000 worth of Licensed Products sold for the year 2013.

- e. Section 5.2- FLUID LUX breached Section 5.2 of the Manufacturing Agreement by failing to meet the quotas, failing to amend its rights to non-exclusive rights as per 5.2(b) for 2014, failing to make payment equal to the shortfall of such quota to maintain exclusive rights as per 5.2(a) for 2014, while at the same time representing to investors, customers, dealers and via the web that FLUID LUX maintained exclusive rights.
- f. Section 6.3- FLUID LUX breached Section 6.3 of the Manufacturing Agreement by failing to make payments within 30 days of the date of invoice.
- g. Section 6.5 FLUID LUX breached Section 6.5 of the Manufacturing Agreement by failing to pay 8.0% interest on all overdue balances outstanding.
- h. Section 11.2 FLUID LUX breached Section 11.2 of the Manufacturing Agreement by improperly telling investors and potential investors that FLUID LUX was the owner of the Patents and Licensed Technology as well as attempting to sell such Licensed Products outside of FLUID LUX's licensed territory.

85. FLUID LUX, as described in more detail above breached the following provisions of the Fluid Lux License Agreements:

- a. Section 4(B) and 22 – FLUID LUX breached Sections 4(B) and 22 by making, using, selling and offering to sell the Licensed Products after July 12, 2014 in breach of the two year non-compete provision.

- b. Section 5(A) FLUID LUX breached Section 5(A) of the License Agreements by failing to pay royalties for the months of January – June, 2014 and failing to meet the sales minimum by the deadline of December 31, 2013.
- c. Section 6(A) FLUID LUX breached Section 6(A) of the License Agreements by failing to furnish HEG written statements under oath specifying the total number of products sold during the preceding month for the months of October 2012-December 2013 and March-June of 2014.
- d. Section 6(B) FLUID LUX breached Section 6(B) of the License Agreements by failing to make royalty payments for the months of January – June, 2014.

86. HEG has performed all conditions precedent to bring this cause of action or all of the conditions have occurred.

87. As a direct and proximate result of FLUID LUX's breach of the provisions outlined above, HEG has suffered loss and damage.

88. HEG has been damaged in amount that is at least equal to \$1,873,755.67 which takes into account the 4 invoices totaling \$224,945.67¹², unpaid royalties to date amounting \$648,810.00 and the unpaid exclusivity fee of \$1,000,000.00.

WHEREFORE, HEG prays for the following relief against FLUID LUX:

a. That FLUID LUX be required to pay HEG the actual damages suffered as a result of the breach, including, but not limited to, all royalties due and owing, all payments for products received, the unpaid exclusivity fee and any other damages as a result of Claimants' conduct.

¹² True and correct copies of the invoices are attached hereto as Exhibit CC.

b. That HEG recover its costs associated with this proceeding, including the arbitrators' fees, costs of any experts or any other assistance required by the tribunal and fees and expenses of the administrator as per Article 37(4).

c. That HEG recover pre-award and post-judgment interest at the amount allowed under the Agreements (8.0%).

d. That HEG be provided such further and other relief as this tribunal deems just and proper.

CLAIM III
PATENT INFRINGEMENT (the '047 PATENT)
(Against FLUID ENERGY, FLUID LUX, MR. PURDY and MR. THATCHER)

89. HEG hereby adopts and re-alleges paragraphs 1-15, 37-74 above as fully and completely as if set forth herein.

90. HEG is the exclusive licensee to United States Patent No. 8,580,047 ("the '047 Patent") at all times material hereto. *See* Exhibit "W."

91. The '047 Patent covers methods for improved urea hydrochloride compositions.

92. Claimants, FLUID LUX and FLUID ENERGY, through the participation, direction, control and with the financial benefit and actual knowledge of Mr. Purdy and Mr. Thatcher are making, using, selling and offering for sale products that are produced using methods disclosed and claimed in the '047 Patent, without the authorization of HEG, in violation of 35 U.S.C. §§271(a), (b), and (g).

93. Mr. Purdy and Mr. Thatcher actively and knowingly induced the infringement alleged in Paragraph 92 by aiding and abetting FLUID LUX's and FLUID ENERGY's infringement.

94. FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher's aforesaid activities have been without authority and/or license from HEG and are considered intentional and willful.

95. HEG is entitled to recover from the FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher the damages sustained by HEG as a result of the wrongful acts alleged herein in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this tribunal under 35 U.S.C. § 284.

96. FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher's infringement of HEG's exclusive rights under the '047 Patent will continue to damage HEG, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this tribunal.

WHEREFORE, HEG respectfully requests the following relief against Counterclaim Respondents.

a. That Counterclaim Respondents and all employees, independent contractors, agents or those acting in concert be preliminarily and permanently enjoined from:

i. Making, using, offering for sale or selling synthetic acid replacements utilizing the methods claimed in the '047 Patent;

ii. Otherwise infringing on the '047 Patent.

b. That Counterclaim Respondents be ordered to pay compensatory damages to HEG pursuant to 35 U.S.C. §284.

c. That HEG be entitled to enhancement of damages against Counterclaim Respondents pursuant to 35 U.S.C. §284.

d. That HEG be awarded its reasonable attorneys' fees and costs pursuant to 35 U.S.C. §285 and Federal Rule of Civil Procedure 54(d).

e. That HEG be awarded prejudgment and post judgment interest.

f. That this tribunal provides such other and further relief that it deems necessary and reasonable.

CLAIM IV
PATENT INFRINGEMENT (the '971 PATENT)
(Against FLUID ENERGY, FLUID LUX, MR. PURDY and MR. THATCHER)

97. HEG hereby adopts and re-alleges paragraphs 1-15, 37-74 above as fully and completely as if set forth herein.

98. HEG is the exclusive licensee to United States Patent No. 8,430,971 ("the '971 Patent") at all times material hereto. *See* Exhibit "Y."

99. The '971 Patent covers compositions for treatment of a drilling fluid and associated methods therewith.

100. Claimants, FLUID LUX and FLUID ENERGY, through the participation, direction, control and with the financial benefit and actual knowledge of Mr. Purdy and Mr. Thatcher are making, using, selling and offering for sale products that are produced using methods disclosed and claimed in the '971 Patent, without the authorization of HEG, in violation of 35 U.S.C. §§271(a), (b), and (g).

101. Mr. Purdy and Mr. Thatcher actively and knowingly induced the infringement alleged in Paragraph 100 by aiding and abetting FLUID LUX's and FLUID ENERGY's infringement.

102. FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher's aforesaid activities have been without authority and/or license from HEG and are considered intentional and willful.

103. HEG is entitled to recover from the FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher the damages sustained by HEG as a result of the wrongful acts alleged herein in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this tribunal under 35 U.S.C. § 284.

104. FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher's infringement of HEG's exclusive rights under the '971 Patent will continue to damage HEG, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this tribunal.

WHEREFORE, HEG respectfully requests the following relief against Counterclaim Respondents.

a. That Counterclaim Respondents and all employees, independent contractors, agents or those acting in concert be preliminarily and permanently enjoined from:

i. Making, using, offering for sale or selling synthetic acid replacements utilizing the methods claimed in the '971 Patent;

ii. Otherwise infringing on the '971 Patent.

b. That Counterclaim Respondents be ordered to pay compensatory damages to HEG pursuant to 35 U.S.C. §284.

c. That HEG be entitled to enhancement of damages against Counterclaim Respondents pursuant to 35 U.S.C. §284.

d. That HEG be awarded its reasonable attorneys' fees and costs pursuant to 35 U.S.C. §285 and Federal Rule of Civil Procedure 54(d).

e. That HEG be awarded prejudgment and post judgment interest.

f. That this tribunal provides such other and further relief that it deems necessary and reasonable.

CLAIM V
PATENT INFRINGEMENT (the '573 PATENT)
(Against FLUID ENERGY, FLUID LUX, MR. PURDY and MR. THATCHER)

105. HEG hereby adopts and re-alleges paragraphs 1-15, 37-74 above as fully and completely as if set forth herein.

106. HEG is the exclusive licensee to United States Patent No. 8,784,573 ("the '573 Patent") at all times material hereto. *See* Exhibit "AA."

107. The '573 Patent covers methods for using improved urea hydrochloride compositions.

108. Claimants, FLUID LUX and FLUID ENERGY, through the participation, direction, control and with the financial benefit and actual knowledge of Mr. Purdy and Mr. Thatcher are making, using, selling and offering for sale products that are produced using methods disclosed and claimed in the '573 Patent, without the authorization of HEG, in violation of 35 U.S.C. §§271(a), (b), and (g).

109. Mr. Purdy and Mr. Thatcher actively and knowingly induced the infringement alleged in Paragraph 108 by aiding and abetting FLUID LUX's and FLUID ENERGY's infringement.

110. FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher's aforesaid activities have been without authority and/or license from HEG and are considered intentional and willful.

111. HEG is entitled to recover from the FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher the damages sustained by HEG as a result of the wrongful acts alleged herein in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this tribunal under 35 U.S.C. § 284.

112. FLUID LUX, FLUID ENERGY, Mr. Purdy and Mr. Thatcher's infringement of HEG's exclusive rights under the '573 Patent will continue to damage HEG, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this tribunal.

WHEREFORE, HEG respectfully requests the following relief against Counterclaim Respondents.

- a. That Counterclaim Respondents and all employees, independent contractors, agents or those acting in concert be preliminarily and permanently enjoined from:
 - i. Making, using, offering for sale or selling synthetic acid replacements utilizing the methods claimed in the '573 Patent;
 - ii. Otherwise infringing on the '573 Patent.
- b. That Counterclaim Respondents be ordered to pay compensatory damages to HEG pursuant to 35 U.S.C. §284.
- c. That HEG be entitled to enhancement of damages against Counterclaim Respondents pursuant to 35 U.S.C. §284.

d. That HEG be awarded its reasonable attorneys' fees and costs pursuant to 35 U.S.C. §285 and Federal Rule of Civil Procedure 54(d).

e. That HEG be awarded prejudgment and post judgment interest.

f. That this tribunal provides such other and further relief that it deems necessary and reasonable.

CLAIM VI
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. §1114
(Against FLUID ENERGY, FLUID LUX, MR. PURDY and MR. THATCHER)

113. HEG hereby adopts and re-alleges paragraphs 1-15, 19-24, 66-74 above as fully and completely as if set forth herein.

114. Respondent HEG is the owner of all right, title, and interest in U.S. Trademark Reg. No. 4,224,628 for ENVIRO-SYN®.

115. Claimants were previously licensed to use the mark ENVIRO-SYN® mark in connection with the promotion, advertising, sale, and offering of the Licensed Products for sale, but such license was revoked on June 12, 2014 as found in the Termination Letter attached hereto as Exhibit "U."

116. Claimants' use in commerce of the identical mark ENVIRO-SYN® in association with identical goods is likely to cause confusion among consumers and has in fact already caused confusion in that customers believe they are receiving the true ENVIRO-SYN® licensed products when in fact this is not true.

117. Claimants' use of the mark has been at the direction, control and financial benefit of Mr. Purdy and Mr. Thatcher, and they were the moving force behind the infringing use of the mark.

118. As a direct and proximate result of Claimants' infringing use of the ENVIRO-SYN® mark, Claimants have caused Respondent to lose profits, and to lose goodwill associated with the ENVIRO-SYN® mark.

119. Respondent HEG will be irreparably damaged by continued loss of profits, loss of goodwill and loss of control over the reputation of the ENVIRO-SYN® mark unless FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy are prevented from continuing to promote, advertise, sell or to offer the no longer Licensed Products with the identical ENVIRO-SYN mark.

120. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy have thereby created a likelihood of confusion in the market place that will continue and increase if FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy are permitted to continue their unauthorized use and misappropriation of Respondent's ENVIRO-SYN® trademark.

121. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy continued to use the ENVIRO-SYN® trademark after such license was terminated and have thereby infringed Respondent's mark willfully and with wanton disregard of Respondent's rights, and will continue to do so unless enjoined.

122. Once FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's infringing conduct was brought to their attention by HEG; FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy refused to stop using the ENVIRO-SYN® mark and made a deliberate decision to continue using the ENVIRO-SYN® mark to advertise, promote, offer for sale, and sell their infringing goods.

123. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's use and continued use of the ENVIRO-SYN mark is willful, wanton, and shows a reckless disregard for HEG's rights.

124. HEG has been damaged and is likely to be further damaged by FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's infringing acts, and that damage will be irreparable unless Claimants' conduct is enjoined.

WHEREFORE, HEG respectfully requests the following relief against Counterclaim Respondents.

a. That Counterclaim Respondents and all employees, independent contractors, agents or those acting in concert be preliminarily and permanently enjoined from:

- i. Using the ENVIRO-SYN® mark or any mark that is confusingly similar thereto in association with the advertising, promotion, offering for sale or sale of synthetic acid replacements or any products similar thereto;
- ii. Otherwise infringing on the ENVIRO-SYN® mark.

b. That Counterclaim Respondents be ordered to pay all profits received by Counterclaim Respondents as a result of the infringing activity and compensate HEG for any damages sustained pursuant to 15 U.S.C. §1117.

c. That the tribunal award HEG treble damages because of the intentional and willful acts set forth herein pursuant to 15 U.S.C. §1117(a).

d. That this case be deemed exceptional and Counterclaim Respondents be ordered to pay HEG reasonable attorney's fees pursuant to 15 U.S.C. §1117(a).

e. That this tribunal provides such other and further relief that it deems necessary and reasonable.

COUNT VII
(TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
UNDER 15 U.S.C. §1125(a))

125. Respondent HEG re-alleges each and every allegation set forth in 1-15, 19-24, 50-74 above, as if fully set forth herein.

126. Respondent HEG has used the ENVIRO-SYN® mark in interstate commerce to advertise, promote, and distinctly identify its synthetic acid goods since at least as early as November of 2010.

127. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's continued to use the ENVIRO-SYN® mark to promote their infringing goods after the license was revoked on June 12, 2014 constitutes trademark infringement and unfair competition, and such use of the mark has been at the direction, control and financial benefit of Mr. Purdy and Mr. Thatcher, who were the moving force behind the infringing use of the mark.

128. Respondent's use of the ENVIRO-SYN® mark in interstate commerce pre-dates FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's adoption and use of the ENVIRO-SYN® mark.

129. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's unauthorized use of the ENVIRO-SYN® mark is likely to cause confusion, mistake, or to deceive customers as to Respondent's affiliation, connection, association, sponsorship, or approval of FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's goods.

130. Respondent has been damaged and is likely to be further damaged by FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's infringing acts, and that damage will be irreparable unless such conduct is enjoined.

131. Once FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's infringing conduct was brought to their attention by HEG, FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy refused to stop using the ENVIRO-SYN® mark and made a deliberate decision to continue using the ENVIRO-SYN® mark to advertise, promote, offer for sale, and sell their infringing goods.

132. FLUID LUX, FLUID ENERGY, Mr. Thatcher and Mr. Purdy's use and continued use of the ENVIRO-SYN® mark is willful, wanton, and shows a reckless disregard for Respondent's rights.

WHEREFORE, HEG respectfully requests the following relief against Counterclaim Respondents.

a. That Counterclaim Respondents and all employees, independent contractors, agents or those acting in concert be preliminarily and permanently enjoined from:

- i. Using the ENVIRO-SYN® mark or any mark that is confusingly similar thereto in association with the advertising, promotion, offering for sale or sale of synthetic acid replacements or any products similar thereto;
- ii. Otherwise infringing on the ENVIRO-SYN® mark.

b. That Counterclaim Respondents be ordered to pay all profits received by Counterclaim Respondents as a result of the infringing activity and compensate HEG for any damages sustained pursuant to 15 U.S.C. §1117.

c. That the tribunal award HEG treble damages because of the intentional and willful acts set forth herein pursuant to 15 U.S.C. §1117(a).

d. That this case be deemed exceptional and Counterclaim Respondents be ordered to pay HEG reasonable attorney's fees pursuant to 15 U.S.C. §1117(a).

e. That this tribunal provides such other and further relief that it deems necessary and reasonable.

DATED this 8th day of August, 2014.

Respectfully submitted,

BEUSSE WOLTER SANKS & MAIRE, P.A.
390 North Orange Avenue, Suite 2500
Orlando, Florida 32801
Telephone: (407) 926-7700
Facsimile: (407) 926-7720
Email: adavis@iplawfl.com
Email: kwimberly@iplawfl.com
Attorneys for Respondents

By: /s/ Amber N. Davis
Amber N. Davis
Florida Bar No.: 26628
Kevin W. Wimberly
Florida Bar No. 57977

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed and emailed to Torys, LLP c/o David Wawro, Esq. (dwawro@torys.com) and Jaclyn Leader

(jleader@torys.com) 1114 Avenue of the Americas, 23rd Floor, New York, NY 10036 and five (5) hard copies have been mailed to the International Chamber of Commerce (ICC) c/o Sicana, Inc., 1212 Avenue of the Americas, New York, NY 10036 and emailed to ica9@iccwbo.org this 8th day of August, 2014.

/s/ Amber N. Davis
Attorney